

REMARKS

Claims 1-41 are pending in the application and stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2003/008877 to Merchen. Applicants respectfully traverse the rejection and contend that at the very least Merchen does not anticipate the subject matter of claims 1, 21, 36 or 40.

On a fundamental level, the teachings of Merchen are different and essentially irrelevant within the context of the subject matter of the claimed inventions. Indeed, Merchen is generally directed to methods for authorizing electronic data transfers using digital certificate techniques, namely, methods for creating non-repudiated digital receipts and electron signatures for electronic transactions (See Merchen Abstract)

In contrast, the subject matters of the claimed inventions are generally directed to methods for “de-identifying” data records of individuals by removing information that relates to the identity of the individual to generate de-identified data records, and then creating encrypted IDs that are associated with the de-identified data records and which allow the patient identity information to be recovered. By way of example, as discussed in the background section of Applicants specification, in the context of medical data records and the HIPAA Privacy Rule, certain entities are allowed to “de-identify” protected health information for certain purposes so that such information may be used and disclosed freely, without being subject to the protections afforded by the Privacy Rule. The term “de-identified data” as used by HIPAA refers to patient data from which all information that could reasonably be used to identify the patient has been removed (e.g., removing name, address, social security numbers, etc). Although the patient data records are de-identified, there is no mechanism by which patient identification can be recovered, if necessary.

In view of the above, it is respectfully submitted that at the very least, Merchen does not anticipate or render obvious the subject matters of claims 1, 21, 36 or 40. In formulating the rejections of independent claims 1, 21, 36 and 40, the Examiner provides a very general, omnibus rejection that simply cites paragraphs [0089], [0081] and {0098} of Merchen as disclosing subject matters of claims 1, 21, 36 and 40, while offering no supporting explanation. However, the basis for the Examiner’s rejection is unclear and seemingly unfounded giving that the cited sections of Merchen are essentially irrelevant, and clearly do not disclose, the subject matters of the claims.

For instance, with regard to claim 1, Merchen does not disclose in paragraph [0089] a

claimed feature of *removing patient identifying information in the patient data record to generate a de-identified data record*, as contended on page 2 of the Office Action. In the context of the claimed inventions, generating a “de-identified” data record comprised removing (purging patient identifying information from the data record, such as removing information that can be used to identify the patient of the patient data records, such as name, zip codes, birth dates, etc. (see pages 23-24 of Applicants’ specification, for example).

Merchen generally discloses in paragraph [0089] that privacy and secrecy of patient information is made possible by incorporating encrypting and hashing techniques. This has nothing to do with, and clearly does not explicitly teach, the process of “generating a de-identified data record” in the context of the claimed inventions. In fact, Merchen generally teaches a process (paragraphs [0089–0098]) to support electronic data transfers (e.g., electronic prescriptions) whereby a Doctor can use a personal digital certificate to send an encrypted electronic prescription to a Pharmacist who may access and decrypt the electronically transferred, encrypted e-prescription using a valid unique digital certificate (see Para. [0098]) Merchen teaches that the pharmacist would not be allowed to view the prescription if his/her digital certificate is revoked (see Para. [0095]).

It should be glaringly apparent that the cited sections have no relation to the claimed process of *removing patient identifying information in the patient data record to generate a de-identified data record*, within the context of the claimed inventions. Indeed, Merchen teaches nothing more than a process of maintaining privacy by simply encrypting an entire electronic file containing patient information for electronic transfer and storage such that only a valid digital certificate holder can access and review the contents of the file (including patient identifying information).

On the other hand, a “de-identified” data record is a data record purges of patient identifying information, but still contains readable and accessible non-patient identifying information that is freely viewable and readable by any person. In the context of the standards of the HIPAA, protected health information that is “de-identified” may be used and disclosed freely, without being subject to the protections afforded by the Privacy Rule (see, Background of Applicants Specification).


Furthermore, it should be fundamentally clear that Merchen does not disclose or suggest *generating an encrypted ID for the patient, wherein the encrypted ID comprises an encrypted representation of one or more items of patient identifying information, much less storing the*

encrypted ID with or in the de-identified data record, as recited in claim 1, for example. Indeed, it is respectfully submitted that the Examiner's reliance on paragraphs [0081 and 0098] of Merchen as disclosing the above claim features, is misplaced.

Again, Merchen teaches nothing more than a process of encrypting an electronic file of patient information, in its entirety, and allowing access to the file only by a holder of a valid digital certificate. Merchen simply does not disclose in the cited sections a process of creating an encrypted ID using one or more of the items of patient identifying information, and storing the encrypted ID with or in the de-identified data record. Indeed, in the context of the claimed inventions, the de-identified data record can be freely accessible and viewable without being decrypted, while the encrypted ID that is associated with the de-identified data record is not accessible or viewable without being decrypted by an authorized individual. This process has an advantage of allowing the non-patient identifying information to be freely accessible while maintaining patient identification privacy, while allowing a authorized entity or individual to recover the identify of the patient associated with the "de-identified" data record when necessary. These fundamental concepts are not disclosed or suggested by Merchen.

Accordingly, claim 1 is patentably distinct and patentable over Merchen. Moreover, to the extent that the rejections of claims 21, 36 and 40 are based on the same rationale for rejection claim 1, Applicants assert that claims 21, 36 and 40 are patentably distinct and patentable over Merchen for at least the same or similar reasons given above for claim 1. Moreover, all over claims depending from claims 1, 21 and 36 are patentably distinct and patentable over Merchen at least by virtue of their dependence from respective base claims 1, 21 and 36. Accordingly, withdrawal of the rejections is requested.

Respectfully submitted,


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